

REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in better form for appeal. Additionally, this amendment addresses items brought up by the examiner in the final office action. Further, the amendments incorporate features of dependent claims into the independent claims. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

35 U.S.C. §102 Rejections

Claims 13, 17-19, 24, 25, 29, 30, 33, and 34 stand rejected under 35 U.S.C. §102(e) as being anticipated by Cottone *et al.* (US 2004/0093058). Applicant respectfully traverses the rejection. Claim 17 has been cancelled, thereby rendering its rejection moot.

Independent claims 13 and 24 have both been amended to recite a weld connecting the at least one flaring member to the tubular body. The Examiner had considered the recitation of the flaring member “weld-connected” to the tubular body as being a product-by-process claim. Although Applicant disagrees with this characterization, Applicant has amended the claims to affirmatively recite a weld in order to accommodate the Examiner. Cottone *et al.* does not disclose a weld connecting the at least one flaring member to the tubular body.

Further, independent claims 13 and 24 have been amended to recite that the tubular body is constructed from a cobalt-chrome alloy. Cottone *et al.* does not disclose a tubular body constructed from a cobalt-chrome alloy.

Accordingly, because Cottone *et al.* does not disclose each and every feature recited in independent claims 13 and 24, it does not anticipate these claims. Claims 18, 19, 25, 29, 30, 33, and 34 depend from and add features to independent claim 13 or 24, and are therefore not anticipated by Cottone *et al.* for at least the same reasons as independent claims 13 and 24. Applicant therefore respectfully requests that the rejection be withdrawn.

35 U.S.C. §103 Rejections

Claims 1-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cottone *et al.* Applicant respectfully traverses the rejection. Claims 3, 5, 6, 14, 16, 17, 26, and 28 have been cancelled, thereby rendering their rejection moot.

Independent claims 1, 13, and 24 recite a weld connecting the at least one flaring member to the tubular body. As admitted by the Examiner, Cottone *et al.* does not disclose or suggest such a structure. Instead, Cottone *et al.* discloses that “the self-expanding region 200 is coupled to the balloon[-]expandable stent region 100 with an encapsulating membrane 300.” (paragraph [0023]). The Examiner asserts, without support, that the encapsulating membrane 300 of Cottone *et al.* is susceptible to shearing forces, and thus one of ordinary skill in the art would have been motivated to replace the membrane with a weld connection. There is no indication in Cottone *et al.* of such a problem. Further, Cottone *et al.* explains that the membrane is “used to uniformly remodel atherosclerotic plaques and keep this material from protruding through the stent struts and end region struts and filaments.” (paragraph [0023]). Replacing the membrane of Cottone *et al.* would eliminate a critical feature of the Cottone *et al.* publication, one that is recited in each of its claims.

The Examiner asserts that welding is known in the art and is given little or not patentable weight. Contrary to the Examiner’s assertions, the art is replete with examples where a weld is the critical feature relied upon by patentees and the Office as the distinguishing feature in allowed claims (*see, e.g.*, U.S. Patent No. 5,443,498).

The Examiner further asserts that welding is not critical to the present application. To the contrary, the present application devotes a significant portion of the specification to explaining a method for welding the tubular body constructed from MP35N to a flaring member constructed from NITINOL. The claims have been amended to specifically recite that the tubular body is constructed from a cobalt-chrome alloy (also not disclosed in the Cottone *et al.* publication) and the flaring member is constructed from a nickel-titanium alloy. Further, the present application does not list any other ways to connect the tubular body and the flaring members. The weld is also recited in each of the claims. Thus, welding is clearly critical to the present invention.

For the reasons set forth above, the Cottone *et al.* publication does not disclose or render obvious the features recited in independent claims 1, 13, and 24 of the present application.

Claims 2, 4, 7-12, 15, 18-23, 25, 27, and 29-34 depend from and add features to independent claim 1, 13, or 24, and are therefore allowable over the Cottone *et al.* publication for at least the same reasons as claims 1, 13, and 24. Applicant therefore respectfully requests that the rejection be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. L. Ferro', with a stylized flourish at the end.

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